

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

BRANDON A. GOODWIN,

Plaintiff,

vs.

KEITH P. HUGHES, M.D. hired
surgeon, Individual capacity; KATHRYN
SCHULZ, Individual capacity; DR.
JEFFREY KASSELMAN, M.D.,
Individual capacity; JEFFREY A.
DAMME, M.D., Individual capacity;
BRENDA HAITH, P.A., Individual
capacity; CHERYL FLINN, P.A. C,
Individual capacity; G. HUSTAD, M.D.,
Individual capacity; JUVET CHE, M.D.,
Individual capacity; RANDY KOHL,
M.D., Individual capacity;
STRASBURGER, D.R., Individual
capacity; and DAVID SAMANI, M.D.,
Individual capacity;

Defendants.

4:19CV3114

MEMORANDUM AND ORDER

This matter is before the court on case management. The Federal Rules of Civil Procedure require that a defendant serve an answer to a complaint “within 21 days after being served with the summons and complaint.” Fed. R. Civ. P. 12(a).

The Clerk of Court issued a summons to Defendant Cheryl Flynn¹ on June 17, 2021. (Filing 29 at CM/ECF pp. 9–10.) On August 25, 2021, the summons was

¹ The court will utilize the “Flynn” spelling of Defendant’s name contained in her Motion for Extension of Time to File Responsive Pleading (filing 46) rather than the “Flinn” spelling found in the Amended Complaint (filing 21).

returned as executed. (Filing 39.) On August 30, 2021, a Motion for Extension of Time to File Responsive Pleading was filed on behalf of Cheryl Flynn and Defendants Dr. Jeffrey Kassleman, M.D.; Jeffrey A. Damme, M.D.; Brenda Haith, P.A.; and Randy Kohl, M.D. by Assistant Attorney General Justin J. Hall and the Nebraska Attorney General's Office, and the court granted Defendants an extension to September 30, 2021, to answer or otherwise plead. (Filings 46 & 48.) Defendants Kassleman, Damme, Haith, and Kohl all have filed answers or motions to dismiss, but Defendant Flynn has not filed an answer or any other responsive pleading. As counsel for Flynn appears to be aware that she has been served, it appears Flynn's failure to answer or respond to the Amended Complaint may be an oversight.

The Clerk of Court also issued a summons to Defendant Juvet Che on June 17, 2021. (Filing 29 at CM/ECF pp. 3–4.) On August 27, 2021, that summons was returned as executed. (Filing 43.) Although served at his residence per his instructions to the Marshals Service,² more than 21 days has elapsed without Defendant Che filing an answer or any other responsive pleading.³

² The Marshals Service contacted Che by phone and learned that the address on the summons was no longer valid. Che requested delivery to a specific address which he indicated was his residence, and the summons was delivered to that address and left with Che's father. (Filing 43 at CM/ECF p. 1.)

³ Service was made on Che pursuant to Fed. R. Civ. P. 4(e)(2)(B), rather than pursuant to Nebraska law. *See* Fed. R. Civ. P. 4(e)(2)(B) (an individual may be served by "leaving a copy of [the summons and of the complaint] at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there"); *see also* Fed. R. Civ. P. 4(e)(1) (service may be made by "following state law"). Thus, Che, who is alleged to be part of the medical staff of the Nebraska Department of Correctional Services, was not also required to be served in his individual capacity at the Office of the Nebraska Attorney General. *See* Neb. Rev. Stat. § 25-511 ("Any employee of the state, as defined in section 81-8,210, sued in an individual capacity for an act or omission occurring in connection with duties performed on the state's behalf, regardless of whether the employee is also sued in an official capacity, must be served by serving the employee under section 25-508.01 and also by serving the state under section 25-510.02.")

Accordingly, in order to progress this matter,

IT IS ORDERED:

1. Plaintiff shall have until December 1, 2021, to file a motion for default judgment against Defendant Juvet Che and Defendant Cheryl Flynn. Such motion shall fully comply with Federal Rule of Civil Procedure 55 and Nebraska Civil Rule 55.1.

2. The Clerk of Court shall send a copy of this Memorandum and Order to Defendant Juvet Che at the address listed in Filing 43 where the United States Marshal served the Defendant.

3. The clerk of the court is directed to set a pro se case management deadline in this case using the following text: **December 1, 2021**: deadline for filing motion for default judgment against Defendants Juvet Che and Cheryl Flynn.

Dated this 1st day of November, 2021.

BY THE COURT:



Richard G. Kopf
Senior United States District Judge